Chong Sui Jin & Ors v Jeramas Sdn Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS S-01–19 OF 2006 AND S-01–20 OF 2006
GOPAL SRI RAM, SURIYADI AND HASAN LAH JJCA
24 MARCH 2008

Civil Procedure — Injunction — Interlocutory injunction — Application to restrain respondents from entering, trespassing, remaining or carrying out construction on land — Whether appellants as ratepayers had locus standi — Whether issue of locus standi a serious question to be tried

Civil Procedure — Locus standi — Action by private citizens — Whether appellants as ratepayers could institute proceedings — Whether appellants had legitimate and special interest in land over other members of public within same municipality — Whether appellants adversely affected by decision to develop land — Whether appellants were beneficiaries of trust property

The ten appellants were the registered owners of seven shophouses. The shophouses had been built on the basis that several parcels of land, which were clearly identified ('the land') were to be expressly reserved to be maintained as public spaces and/or car parks. It was on this basis that the shophouses were sold to the respective purchasers. The land was vested in the Majlis Perbandaran Tawau ('the second respondent') in trust to keep the same open or control the use of the same for the appellants. The land was, in that sense, a trust property and the appellants were the beneficiaries of the same. On or about 16 December 1986, the second respondent entered into a joint venture agreement with Aggasf Construction Sdn Bhd ('ACSB') and Jeramas Sdn Bhd ('JSB') to develop the land into commercial shoplots for commercial gains on a joint venture basis. The second respondent approved the two developments submitted by ACSB and JSB in respect of the land and the two companies subsequently commenced work thereon. The appellants claimed that they had acquired a common right to the use and enjoyment of the land and exercised their private citizen's right to sue by commencing two suits in the High Court. The two suits, which were similar in terms of facts as well as nature of claims and relief, claimed, inter alia, for a declaration that the two joint venture agreements were invalid as being ultra vires the Local Government Ordinance 1961 ('the Ordinance'), a declaration that the development plans submitted by JSB and ACSB relating to the land and approved by the second respondent were invalid and an order for the

development plans to be set aside. On the same day the appellants filed a summons in chambers in both suits under O 29 r 1 of the Rules of the High Court 1980, applying for interim injunctions to restrain JSB and ACSB from entering, trespassing, remaining or carrying out construction on the land and an order to compel them to remove equipments and materials from the land. Since the two applications were substantially identical and the plaintiffs in both suits were the same, it was agreed that the suits and applications be tried together. The parties also agreed that the issue of locus standi of the appellants be addressed first. At the High Court the appellants submitted that their claim for locus standi was based on two grounds; firstly on their interest as ratepayers, ie as the registered owners, ratepayers and inhabitants of the land, the appellants claimed that they had a legitimate and special interest in the land, which was over and above, other members of public within that municipality; secondly they submitted that their right to bring an action arose from the trust property of which they were beneficiaries under s 38 of the Ordinance. The High Court dismissed the application and held that the appellants did not have locus standi and that as general ratepayers in the municipality their private rights had not been interfered with and they did not suffer any special damages peculiar to them. With regard to the appellants' second contention that the appellants were the beneficiaries under a trust, the judicial commissioner held that the trust was not a 'true trust' which was not legally enforceable at the instance of the appellants. This was the appellants' appeal against that decision.

Held, allowing the appeals with costs to follow the event:

(1) In the instant case the judicial commissioner had erred in holding that the appellants' private rights had not been interfered with and that they had suffered no special damages peculiar to them. In fact, the appellants had a genuine private interest to be furthered and protected because they fell within a much narrower class of people by being the registered owners of the shophouses, inhabitants, and users of the public space, public playing grounds, parks, car parks and road reserves in the land. Furthermore, they are the persons who would be adversely affected by the decision of the second respondent to develop the land. They had bought the respective shop houses on the understanding that the land would be expressly reserved to be maintained as public spaces and/or car parks. It was on that basis that they had bought the shophouses and in the circumstances the court should adopt a fairly lenient view of the appellants standing to sue in these proceedings (see para 31).

(2) The issue of locus standi raised in this appeal related to threshold locus standi and not substantive locus standi. The issue of locus standi was

raised in the appellants' application for an interlocutory injunction and there was no application by the respondents to have the suits struck out on the grounds that the appellants' had no locus standi. As such the function of this court at this stage was only to decide whether this issue disclosed a bona fide serious issue to be tried and the court must refrain from making any determination on the issue at this stage as this was only an application for an injunction. However, the judicial commissioner erred when she made a final determination on the issue of locus standi and failed to follow the guidelines stated by this court in *Keet Gerald Francis v Mohd Noor bin Abdullah* [1995] 1 MLJ 193 (*Keet*'s case). The High Court should have instead held that there was a serious issue raised on locus standi and then moved on to the next step of its inquiry in accordance with the guidelines set out in *Keet*'s case (see para 32).

[Bahasa Malaysia summary

Kesepuluh-sepuluh perayu merupakan pemilik berdaftar tujuh rumah kedai. Rumah-rumah kedai tersebut dibina berdasarkan bahawa beberapa keping tanah, yang jelas dikenalpasti ('tanah tersebut') adalah dengan nyata dirizabkan untuk dikendalikan sebagai kawasan awam dan/atau tempat letak kereta. Berdasarkan inilah rumah-rumah kedai tersebut dijual kepada pembeli-pembeli tersebut. Tanah tersebut telah diberikan dalam amanah Majlis Perbandaran Tawau ('responden kedua') untuk memastikannya terbuka atau dikawal penggunaannya untuk perayu-perayu. Tanah tersebut telah, dalam erti kata itu, hartanah amanah dan perayu-perayu merupakan benefisiari-benefisiarinya. Pada atau sekitar 16 Disember 1986, responden kedua telah memasuki perjanjian usaha sama dengan Aggasf Construction Sdn Bhd ('ACSB') dan Jeramas Sdn Bhd ('JSB') untuk memajukan tanah tersebut menjadi lot-lot kedai untuk mendapat keuntungan komersial secara usaha sama. Responden kedua telah meluluskan kedua-dua pembangunan yang dikemukakan oleh ACSB dan JSB berkaitan tanah tersebut dan kedua-dua syarikat tersebut kemudiannya telah memulakan kerja. Perayu-perayu menuntut bahawa mereka telah memperoleh hak bersama untuk menggunakan dan menikmati tanah tersebut dan menggunakan hak kewarganegaraan persendirian mereka untuk menyaman dengan memulakan dua guaman di Mahkamah Tinggi. Kedua-dua guaman tersebut yang sama dari segi fakta dan sifat tuntutan dan relief, menuntut, antara lain, untuk satu deklarasi bahawa kedua-dua perjanjian usaha sama tersebut adalah tidak sah kerana telah melampaui bidang kuasa Ordinan Kerajaan Tempatan 1961 ('Ordinan tersebut'), satu deklarasi bahawa rancangan-rancangan pembangunan yang dikemukakan oleh JSB dan ACSB berkaitan tanah tersebut dan yang diluluskan oleh responden kedua adalah tidak sah dan satu perintah untuk rancangan-rancangan pembangunan diketepikan. Pada hari

yang sama perayu-perayu telah memfailkan saman dalam kamar untuk kedua-dua guaman tersebut di bawah A 29 k 1 Kaedah-Kaedah Mahkamah Tinggi 1980, memohon injunksi-injunksi interim untuk menghalang JSB dan ACSB daripada memasuki, menceroboh, menduduki atau menjalankan pembinaan atas tanah tersebut dan satu perintah untuk mendesak mereka mengalihkan alat-alat dan bahan-bahan atas tanah tersebut. Memandangkan kedua-dua permohonan adalah sama dan plaintif-plaintif dalam kedua-dua guaman adalah sama, adalah dipersetujui bahawa guaman-guaman dan permohonan-permohonan tersebut didengar bersama. Pihak-pihak juga bersetuju bahawa isu locus standi perayu-perayu dikemukakan dulu. Di Mahkamah Tinggi perayu-perayu menghujahkan bahawa tuntutan mereka untuk locus standi adalah berdasarkan dua alasan, pertama berhubung kepentingan mereka sebagai pembayar cukai pintu, iaitu sebagai pemilik berdaftar, pembayar cukai pintu dan penduduk tanah tersebut, perayu-perayu menuntut bahawa mereka mempunyai kepentingan sah dan istimewa ke atas tanah tersebut, yang adalah melebihi orang awam lain dalam kawasan perbandaran; keduanya mereka menghujahkan bahawa hak mereka untuk memulakan tindakan timbul daripada hartanah amanah yang mana mereka merupakan benefisiari-benefisiari di bawah s 38 Ordinan tersebut. Mahkamah Tinggi telah menolak permohonan tersebut dan memutuskan bahawa perayu-perayu tidak mempunyai locus standi dan bahawa sebagai pembayar cukai pintu am dalam kawasan perbandaran hak-hak peribadi mereka tidak terjejas dan mereka tidak mengalami apa-apa kerugian istimewa yang khusus kepada mereka. Berhubung pendapat kedua perayu-perayu bahawa perayu-perayu merupakan benefisiari-benefisiari di bawah amanah, pesuruhjaya kehakiman memutuskan bahawa amanah tersebut bukan 'amanah sebenar' yang tidak berkuat kuasa secara sah untuk perayu-perayu. Ini adalah rayuan perayu-perayu terhadap keputusan tersebut.

Diputuskan, membenarkan rayuan-rayuan dengan kos mengikut keadaan:

(1) Dalam kes ini pesuruhjaya kehakiman terkhilaf dalam memutuskan bahawa hak-hak peribadi perayu-perayu tidak terjejas dan bahawa mereka tidak mengalami apa-apa kerugian istimewa yang khusus kepada mereka. Bahkan, perayu-perayu mempunyai kepentingan peribadi yang tulen untuk diteruskan dan dilindungi kerana mereka terangkum dalam kelas perseorangan yang lebih kecil dengan menjadi pemilik-pemilik berdaftar rumah kedai, penduduk, dan pengguna kawasan awam, taman permainan awam, tempat letak kereta dan rizab jalan atas tanah tersebut. Tambahan pula, mereka merupakan pihak yang akan terjejas teruk oleh keputusan responden kedua untuk memajukan tanah tersebut. Mereka telah membeli rumah-rumah kedai tersebut dengan persefahaman bahawa tanah tersebut akan dirizabkan

dengan nyata untuk dikendalikan sebagai kawasan awam dan/atau kawasan letak kereta. Atas dasar inilah mereka telah membeli rumah kedai tersebut dan dalam keadaan tersebut mahkamah perlu mengambil pendekatan yang adil terhadap kedudukan perayu-perayu yang menyaman dalam prosiding tersebut (lihat perenggan 31).

(2) Isu locus standi yang ditimbulkan dalam rayuan ini adalah berkaitan locus standi ambang dan bukan locus standi substantif. Isu locus standi ditimbulkan dalam permohonan perayu-perayu untuk injunksi interlokutori dan tiada permohonan oleh responden-responden untuk membatalkan guaman-guaman tersebut atas alasan bahawa perayu-perayu tiada locus standi. Oleh yang demikian fungsi mahkamah ini di peringkat ini adalah hanya untuk memutuskan sama ada isu ini menunjukkan isu bona fide serius yang perlu dibicarakan dan mahkamah hendaklah dihalang daripada membuat apa-apa penentuan berhubung isu tersebut di peringkat ini kerana ini hanya merupakan permohonan untuk injunksi. Walau bagaimanapun, pesuruhjaya kehakiman terkhilaf semasa beliau membuat penentuan muktamad berhubung isu locus standi dan gagal mengikuti panduan yang dinyatakan oleh mahkamah ini dalam *Keet Gerald Francis v Mohd Noor bin Abdullah* [1995] 1 MLJ 193 ('kes *Keet*'). Mahkamah Tinggi sebaliknya patut memutuskan bahawa terdapat isu serius ditimbulkan tentang locus standi dan kemudian beralih ke langkah seterusnya dalam siasatannya menurut panduan yang dinyatakan dalam kes *Keet* (lihat perenggan 32).]

Notes

For cases on action by private citizens, locus standi generally, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4669–4741.

For cases on interlocutory injunction, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3224–3348.

Cases referred to

Alor Janggus Soon Seng Trading Sdn Bhd v Sey Hoy Sdn Bhd [1995] 1 MLJ 241 (refd)

Fawziah Holdings Sdn Bhd v Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) and another appeal [2006] 1 MLJ 505

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12 (refd)

Iskandar Gayo & Ors v Datuk Joseph Pairin Kitingan & Ors [1996] 3 CLJ 713 (refd)

Keet Gerald Francis Noel John v Mohd Noor bin Abdullah [1995] 1 MLJ 193 (folld)

Ketua Pengarah Jabatan Alam Sekitar v Kajing Tubek and other appeals [1997] 3 MLJ 23 (refd)

Knight v Knight (1840) 49 ER 68 (refd)

Lim Cho Hock v Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh [1980] 2 MLJ 148 (refd)
Tan Sri Haji Othman Saat v Mohamed bin Ismail [1980] 2 MLJ 177 (refd)
Tito v Waddell (No 2) [1977] 1 Ch 106 (refd)

Legislation referred to
Local Government Ordinance 1957 ss 38, 38(1)
Rules of the High Court 1980 O 29 r 1

Appeal from: Civil No T(21) 52 of 2005 (High Court,Tawau)

Dato' Simon KY Shim (Wilson Lim with him) (Shim, Pang & Co) for the appellant.
Brenndon Keith Soh (Ronny Cham & Co) for the first respondent.

Hasan Lah JCA (delivering judgment of the court):

[1] On 25 June 2007 we heard these two appeals and after hearing submissions made by the parties we allowed the appeals. We now give our reasons for the decision.

BACKGROUND

[2] By a development plan duly approved by the then Lembaga Bandaran Tawau via DP12/73 in or about March 1973 ('the first development plan') for the development of commercial shophouses in Bandar Sabindo Tawau, several parcels of land described under TL 107522985 and TL 107523008 had been set aside for the purpose of maintaining open public spaces (hereinafter referred to as 'the said land'). The master title described under TL 106290831 had been sub-divided into various sub-divided titles including that of the said land.

[3] The shophouses and infrastructures had been built on the basis of the first development plan and sub-division plan which had clearly identified that the said land had been expressly reserved for public spaces and/or car parks. It was also on this basis that the shophouses were sold to the respective purchasers.

[4] The ten appellants (the plaintiffs in the High Court) are the registered owners of seven of the shophouses constructed in the said project and as the registered owners of the shophouses they claimed that they are the ratepayers, inhabitants, users and beneficiaries of the public space, public playing

grounds, parks and gardens within the Tawau Municipal area including in particular the open public space at Bandar Sabindo.

[5] By reason of the plaintiffs being the registered owners, ratepayers and inhabitants as well as beneficiaries of the said land, they claimed they have legitimate and special interest in the same over and above other members of public within the Tawau Municipal area and they have acquired a common right to the use and enjoyment of the said land. The said land was vested in the Majlis Perbandaran Tawau ('the Majlis') in trust to keep the same open or control the use of the same for the plaintiffs' benefit. The said land is therefore trust property. The Majlis is trustee and the plaintiffs are the beneficiaries of the same.

[6] On or about 16 December 1996 the Majlis entered into a joint venture agreement with Aggasf Construction Sdn Bhd ('ACSB') and Jeramas Sdn Bhd ('JSB') to develop the said land on a joint venture basis into commercial shoplots for commercial gains.

[7] On or about 27 May 2005 the Majlis approved two development plans ('the second development plans') submitted by ACSB and JSB in respect of the said land and ACSB and JSB subsequently commenced works thereon.

[8] On 14 December 2005 the ten plaintiffs commenced the following two suits in the High Court of Sabah and Sarawak in Tawau:

(a) Suit No T(21)-52 of 2005 against JSB and the Majlis; and

(b) Suit No T(21)-53 of 2005 against ACSB and the Majlis.

[9] The two suits are similar in term of facts as well as nature of claims and relief. The plaintiffs claimed for the following relief from JSB and ACSB:

(a) a declaration that the two joint venture agreements are invalid as being ultra vires the Local Government Ordinance 1961 and the Tawau Municipal Council Instrument 1983;

(b) a declaration that the second development plans submitted by JSB and ACSB relating to the said land and approved by the Majlis are invalid;

(c) an order that the second development plans be set aside;

(d) an order restraining JSB and ACSB from entering, trespassing, remaining and carrying out construction works on the said land together with the adjoining lands;

(e) an order compelling JSB and ACSB to forthwith dismantle, remove and clear all plants, equipments and materials laden on the said land.

[10] On the same day the plaintiffs filed summons in chambers in both suits under O 29 r 1 of the Rules of the High Court applying for interim injunctions to restrain JSB and ACSB from entering, trespassing, remaining or carrying out construction on the said land and an order to compel them to remove equipments and materials from the said land.

[11] The parties agreed that the issue of locus standi of the plaintiffs should be addressed first. Since the two applications are substantially identical, in that the plaintiffs are the same in both suits, the parties have agreed that the issue be decided together.

[12] On 1 March 2006, the learned judicial commissioner dismissed the injunction application. The plaintiffs' notices of appeal in both appeals were lodged on 6 March 2006.

[13] The plaintiffs had then orally moved the High Court for an Erinford injunction pending their appeal to this court against the order of the High Court dated 1 March 2006.

[14] The learned judicial commissioner refused to entertain the appellants' oral application and had instead directed the appellants to file a written submission for an Erinford injunction and had then set the hearing date on 4 April 2006.

[15] In view of the urgency of the matter the plaintiffs had then moved this court instead for an Erinford injunction on 8 March 2006 but the aforesaid application was dismissed by this court on 4 April 2006.

IN THE HIGH COURT

[16] On the issue of the locus standi of the plaintiffs to bring the action, counsel for the plaintiffs formulated their claim for locus standi on two prongs namely:

(a) their right is derived from their interest as rate payers;

(b) from the trust property of which they are inhabitants, users and beneficiaries under s 38 of the Local Government Ordinance...

[17] On the first issue the learned judicial commissioner, relying on the majority decision in *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12, held that the plaintiffs did not have locus standi to bring these actions

against the defendants. As general rate-payers in the municipality their private rights have not been interfered with and they did not suffer any special damages peculiar to them.

[18] With regard to the second issue ie whether the plaintiffs are beneficiaries under a trust the learned judicial commissioner held that, as the nature of the trust was such that it was not a 'true trust' but a 'trust in the higher sense', it was not justiciable at the instance of the plaintiffs.

THE APPEAL

[19] Learned counsel for the plaintiffs submitted that the issue of locus standi should not be an issue to be decided at the present stage but rather it should only be considered whether it raises a serious question to be tried. As such the learned judicial commissioner should have refrained from making any final determination of this issue. In support of that he cited the cases of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah* [1995] 1 MLJ 193 and *Alor Janggus Soon Seng Trading Sdn Bhd v Sey Hoy Sdn Bhd* [1995] 1 MLJ 241.

[20] It was the contention of learned counsel for the plaintiffs that the plaintiffs as ratepayers had the requisite locus standi to commence the present action against the defendants in common law. In support of that he cited several English authorities and the local cases of *Lim Cho Hock v Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* [1980] 2 MLJ 148 and *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1980] 2 MLJ 177.

[21] Learned counsel for the plaintiffs further submitted that as they are ratepayers, inhabitants, users and beneficiaries of the said land which is vested in the Majlis who shall keep the same in trust, for the benefits of the plaintiffs within the meaning of s 38(1) of the Local Government Ordinance, that s 38 alone gives the plaintiffs the requisite locus standi to sue.

[22] Learned counsel for ACSB, on the other hand submitted, inter alia, that there is no creation of a 'true trust' by s 38(1) of the Local Government Ordinance. In support of that he cited the House of Lords decision in *Knight v Knight* (1840) 49 ER 68 and the decision of this court in *Fawziah Holdings Sdn Bhd v Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) and another appeal* [2006] 1 MLJ 505. According to the learned counsel that s 38(1) only creates a 'trust in the higher sense' which is not legally enforceable. He referred to the decisions in *Tito v Waddell (No 2)* [1977] 1 Ch 106 and *Iskandar Gayo & Ors v Datuk Joseph Pairin Kitingan & Ors* [1996] 3 CLJ 713.

[23] It was also submitted by learned counsel for ACSB that the plaintiffs do not have locus standi to bring this action against the defendants in common law because the plaintiffs have not suffered any special damage over and above the ordinary ratepayers, inhabitants, users and registered owners of the said land. In support of that he referred to the majority decision of the Supreme Court in *Government of Malaysia v Lim Kit Siang*.

DECISION OF THE COURT OF APPEAL

[24] Since threshold locus standi is the only issue in this appeal it is necessary and desirable to understand about it and for this this court has given an explanation in *Ketua Pengarah Jabatan Alam Sekitar v Kajing Tubek* [1997] 3 MLJ 23 on the subject. At p 40 Gopal Sri Ram JCA has made the following observation:

> Absent any statutory provision, locus standi – or standing to bring an action for a declaration in public law — is a matter of pure practice that is entirely for the courts to decide. Courts of some countries adopt a fairly lenient stance, while others insist on a stricter approach. In the United States, the pendulum of locus standi has swung from one extreme to another depending upon current judicial impression. Compare, for example, *Flast v Cohen* (1968) 392 US 83 with *Valley Forge College v Americans United* (1982) 454 US 464.
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> The choice appears to really depend upon the economic, political and cultural needs and background of individual societies within which the particular court functions. As these are not uniform in all countries, and fluctuate from time to time within the same country, views upon standing to sue in public law actions for declaratory or injunctive relief vary according to peculiar circumstances most suited to a particular national ethos.
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> I make these introductory remarks to demonstrate what I consider to be a vital policy consideration. It is this. When our courts come to decide whether to grant standing to sue in particular case, they must be extremely cautious in applying decisions of the courts of other countries because the reasons for granting or refusing standing in those other jurisdictions may depend upon the wider considerations to which I have referred in the preceding paragraph.
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> In public law – and, in so far at least as the appellants in the first and second appeal are concerned, the summons in the present instance lies in public law – there are two kinds of locus standi. The first is the initial or threshold locus standi; the second is the substantive locus standi.
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> Threshold locus standi refers to the right of a litigant to approach the court in relation to the facts which form the substratum of his complaint. It is usually tested upon an application by the defendant to have the action struck out on the ground that the plaintiff, even if all that he alleges is true, cannot seek redress in the courts.
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> Although a litigant may have threshold locus standi in the sense discussed, he may, for substantive reasons, be disentitled to declaratory relief. This, then, is substantive locus standi. The factors that go to a denial of substantive locus standi are so

numerous and wide ranging that it is inappropriate to attempt an effectual summary of them. Suffice to say that they range from the nature of the subject matter in respect of which curial intervention is sought to those settled principles on the basis of which a court refuses declaratory or injunctive relief.

[25] Looking at the arguments in the High Court and the submissions made to us we have no doubt that the issue of locus standi raised in this appeal related to the threshold locus standi and not the substantive locus standi. The function of the court at this stage is only to decide whether this issue discloses a bona fide serious issue to be tried and the court must refrain from making any determination on the issue at this stage as this is only an application for an injunction. This has been clearly stated by Jemuri Serjan CJ (Borneo) in *Alor Janggus Soon Seng Trading Sdn Bhd v Sey Hoe Sdn Bhd* [1995] 1 MLJ 241 at p 266:

> At an interlocutory proceeding for an injunction, the court is not called upon nor is it desirable for the court to decide finally on the rights of the parties but the court must be satisfied that there is a serious issue to be tried. The court is not justified in embarking upon anything resembling the trial of the action upon conflicting affidavits nor to evaluate the strength of either party's case. This is settled law now hallowed by the famous word of Lord Diplock in *American Cyanamid*'s case ([1975] AC 396 at p 407; [1975] 1 All ER 504 at p 510; [1975] 2 WLR 316 at p 323):
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> … It is no part of the court's function at this state of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations.

[26] There are two views on the locus standi to sue for a declaration in public law proceedings in Malaysia. The common law authorities on individual standing to sue have been applied by the Malaysian courts on numerous occasions. In *Lim Cho Hock v Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* the plaintiff who was a member of Parliament for the parliamentary constituency of Ipoh as well as a member of the Perak State Legislative Assembly for the constituency of Kepayang and a ratepayer within the Council area sought declaration that the offices of Menteri Besar and President of the Council could not be held by the same individual, that the appointment of the Menteri Besar as President of the Council was inoperative and null and void, and that the State Authority had exceeded its powers in making this appointment. Abdoolcader J (as he then was) reviewed extensively numerous authorities on the issue of locus standi in the Commonwealth and concluded that:

> In the light of the authorities I have discussed, I can see no reason to deny standing to the plaintiff as a ratepayer to institute and seek the relief he does in these proceedings.

[27] Abdoolcader J sat as a Federal Court judge in the case of *Tan Sri Haji Othman Saat v Mohamed bin Ismail* and he took another opportunity to review cases relating to private citizen's right to sue. In that case the respondent and 183 other persons had applied for land in Mersing, Johore but with no response for some eight years. The respondent learnt that land in the area had been alienated to a number of people, including the appellant, who was at all material times the Menteri Besar of the State of Johore and other personages in the upper echelon of the administrative service. The respondent applied for declarations basically impugning the validity of the alienation of the land and named as respondents thereto the State Director of Lands and Mines and the Government of the State of Johore in addition to the appellant. The appellant applied to have the proceedings struck out primarily on a challenge to the respondent's standing to sue and also on certain procedural objections. The appellant's application was dismissed in the High Court and he appealed to the Federal Court on the issue of the respondent's locus standi.

Abdoolcader J approved *Lim Cho Hock*'s case and endorsed the concept of liberalising the scope of individual standing and gave lengthy reasons why the threshold of locus standi must be lower nowadays. At p 179 the learned judge said:

> The sensible approach in the matter of locus standi in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice. When it comes however to the question of discretion on a consideration of the substantive application it may well be proper in particular cases to refuse a remedy to persons who, though they may have standing as a matter of jurisdiction on the lines we have indicated, do not merit it, perhaps because, inter alia, others are more directly affected, or the plaintiff himself is fundamentally not.

[28] In *Government of Malaysia v Lim Kit Siang* the respondent who was a Member of Parliament and the Leader of the Opposition had applied for a declaration that the letter of intent issued by the government to United Engineers (M) Bhd (UEM) in respect of the North and South Highway contract is invalid and for a permanent injunction to restrain UEM from signing the contract with the government. The plaintiff filed his suit in the Penang High Court on 18 August 1987 and on the same day he applied by way of ex parte summons in chambers for an interim injunction against

A UEM to restrain it from signing the contract. Edgar Joseph Jr J who heard the application refused it. On appeal to the Supreme Court, the court, in an oral judgment on 25 August 1987, ordered the interim injunction to be issued with liberty to apply and at the same time directed an early trial of the suits.

B UEM and the government applied to the High Court to have the interim injunction set aside and the suits struck out on the ground that they disclosed no reasonable cause of action and also for lack of locus standi, in addition to being frivolous, vexatious and an abuse of the court's process. The application were heard by VC George J who dismissed them. Both UEM and the

C government appealed to the Supreme Court.

[29] On the question of locus standi the majority held that the respondent could not have locus standi, whether as a politician, a road and highway user or a taxpayer. At pp 20 and 21, Salleh Abas LP made the following

D observation:

> What is the law on locus standi?
>
> A clear statement of it was stated by Buckley J in *Boyce v Paddington Borough*

E *Council* (3) as follows:

> > A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (eg where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially

F affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.

G
> The above passage was accepted by the House of Lords in *Gouriet v Union of Post Office Workers & Ors* (4) (see the speeches of Lord Edmund Davies and Lord Fraser). That was the law of locus standi declared by the highest court in England in 1977. However, six months later the law was changed as a result of a new procedure of judicial review introduced by O 53 of the UK Supreme Court Rules.

H

And further down he said:

> The study of the development of the law on locus standi in England is very interesting. During the tenureship of Lord Denning MR, it appears that the Court

I of Appeal by a spate of judicial activism widened the law on locus standi by dispensing with the requirements of private right or private injury caused to the complaining citizen. (See *Reg v Commissioner of Police of the Metropolis, ex parte Blackburn (5)*; *Blackburn v Attorney-General* (6); *Attorney-General (on the relation of McWhirter) v Independent Broadcasting Authority* (7) at p 698 and *Reg v Greater London Council, ex parte Blackburn and Another (8)* at p 559).

> This was the view then prevailing in English law in the late sixties and seventies until it was rejected by the House of Lords in 1977 in *Gouriet*'s case. This case restored the law on locus standi to what was formerly stated by Buckley J in *Boyce*'s case. However, the restoration was shortlived because six months later a new procedure by way of judicial review, which combines applications for the prerogative orders of mandamus, certiorari and prohibition with applications for declaratory and injunctive remedies, was introduced by O 53 of the UK Supreme Court Rules.

[30] In his judgment also Salleh Abas LP referred to the decisions of Abdoolcader J in *Lim Cho Hock*'s case and *Tan Sri Haji Othman v Mohamed bin Ismail.* At p 24 he said:

> In my judgment, these two cases represent the high water marks of the law of locus standi in Malaysia, beyond which the court should be careful to tread. Both these cases can be justified on the basis that the plaintiff had a genuine private interest to be furthered and protected.

[31] In the instant case the learned judicial commissioner was of the view that as general ratepayers in the municipality the plaintiffs' private rights have not been interfered with and that they suffered no special damages peculiar to them. With the greatest respect to the learned judicial commissioner we are of the view that the plaintiffs in the instant case have genuine private interest to be furthered and protected. If the plaintiff in *Lim Cho Hock*'s case who was also a ratepayer within the council area was held to have a standing to sue the plaintiffs in the instant case should also be held to have a locus standi to sue in these proceedings. Furthermore we are of the view that the plaintiffs in the instant case are in a stronger position than the plaintiffs in *Lim Cho Hock*'s case and *Lim Kit Siang*'s case because the plaintiffs as the registered owners of the properties in Bandar Sabindo within the Tawau Municipal and who are the inhabitants, and users of the public space, public playing grounds, parks, car parks and road reserve at Bandar Sabindo are within a much narrower class of people. Furthermore they are also claiming that s 38 of the Local Government Ordinance gives them the requisite locus standi to sue. In our view the plaintiffs are the persons who are adversely affected by the decision of the Majlis to develop the said land. They have bought the respective shophouse which have been constructed in accordance with the first development plan which clearly identified that the said land had been expressly reserved for public spaces and car parks. It was on that basis that they bought those shophouse. Under the circumstances we are of the view that the court should adopt a fairly lenient view of the plaintiffs' standing to sue in these proceedings.

[32] In addition, in *Lim Kit Siang*'s case there was also an application by UEM and the government to have the suit struck out on the ground that they

disclosed no reasonable cause of action and also for lack of locus standi. In the instant case the issue of locus standi was raised in the plaintiffs' application for interlocutory injunction and there was no application by the defendants to have the suits struck out on the ground that the plaintiffs have no locus standi. As such the function of the High Court in the instant case at that stage was to determine only whether there was a serious question on locus standi. The learned judicial commissioner did not do that but instead she made a final determination on the issue of locus standi. In our view the learned judicial commissioner had erred when she did not follow the guidelines stated by this court in *Keet Gerald Francis Noel John*'s case. It is also our view that from the submissions made by the parties on the issue of locus standi the High Court should have held that there was a serious issue raised on locus standi and the High Court should then move to the next step of its inquiry in accordance with the guidelines set out in *Keet Gerald Francis Noel John*'s case.

[33] For the reasons stated above we allowed the appeals by the plaintiffs in the two cases with costs to follow the event of the summons in chambers. The orders of the High Court were set aside. It was also ordered that the summons in chambers dated 14 December 2005 be remitted to the High Court for hearing on the merits and both suits be consolidated and be heard and disposed of together.

Appeal allowed with costs to follow event.

Reported by K Nesan